



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Forrester Hancock
Criminal District Attorney
Waxahachie, Texas

Dear Sir:

Opinion No. 0-1982

Re: Is a witness in a criminal case in the District Court entitled to traveling expenses, both to and from court, for one term and also for the subsequent term to which said case was passed by agreement?

Your request for an opinion of this department on the above stated question has been received.

Your letter reads, in part, as follows:

"Under Article 1036 C. C. P., R. C. S. 1925, is a witness, subpoenaed in a criminal proceeding to the District Court, entitled to claim mileage fees when he appears in the Criminal District Court of one term and by reason of the case being passed to the next term he is forced to appear at a subsequent term. That is, is said witness entitled to travelling expenses, both to and from court, for the one term and also for the subsequent term to which said case was passed by agreement?

"My District Clerk is confronted with the above problem wherein a witness was called by the State for the December Term of Court, and by agreement said case which was on call for the December Term was passed to a day definite

in the March Term of my Criminal District Court. This witness in question, by reason of the premises, is forced to make two complete trips to the court, and we are confronted with the problem as to whether or not he can be reimbursed for the same."

Article 1036 of the Code of Criminal Procedure reads, in part, as follows:

"1. Any witness who may have been recognized, subpoenaed or attached, and given bond for his appearance before any court, or before any grand jury, out of the county of his residence to testify in a felony case, and who appears in compliance with the obligations of such recognizance or bond, shall be allowed his actual traveling expenses, not exceeding four cents per mile going to and returning from the court or grand jury, by the nearest practical conveyance, and two dollars per day for each day he may necessarily be absent from home as a witness in such case.

"Witnesses shall receive from the State, for attendance upon district courts and grand juries in counties other than that of their residence, in obedience to subpoenas issued under the provisions of law their actual traveling expenses, not exceeding four cents per mile, going to and returning from the court or grand jury, by the nearest practical conveyance, and two dollars per day for each day they may necessarily be absent from home as a witness, to be paid as now provided by law; and the foreman of the grand jury, or the district clerk, shall issue to such witness certificates therefor, after deducting therefrom the amounts advanced by the officers serving said subpoenas, as shown by the returns on said subpoenas; which certificates shall be approved by the district judge, and recorded by the clerk in a well-bound book kept for that purpose; provided, that when an indictment can be found from the evidence taken before an inquest or examining trial, no subpoena or attachment shall issue for a witness who resides out of the county in which the prosecution is

pending to appear before a grand jury. When the grand jury shall certify to the district judge that sufficient evidence cannot be secured upon which to find an indictment, except upon testimony of nonresident witnesses, the district judge may have subpoenas issued as provided for by law to other counties for witness to testify before the grand jury not to exceed one witness to any one fact, nor more than three witnesses to any one case pending before the grand jury. (As amended Acts 1927, 40th Leg., p. 113, ch. 75, § 1.)

"Sec. 2. Witness fees shall be allowed only to such witnesses as may have been summoned on the sworn written application of the State's attorney or the defendant or his attorney as provided in Article 463, Code of Criminal Procedure, which sworn application must be made at the time of the procuring of the subpoena, attachment for, or recognizance of, the witness. The judge to whom an application for attachment is made, may, in his discretion, grant or refuse such application, when presented in term time. (As amended Acts 1931, 42nd Leg., p. 239, ch. 143 § 3.)

"Sec. 3. Before the close of each term of District Court, the witness shall make an affidavit stating the number of miles he will have traveled going to and returning from the court, by the nearest practical conveyance, and the number of days he will have been necessarily absent in going to and returning from the place of trial; which affidavit shall be filed with the papers of the case. No witness shall receive pay for his services as a witness in more than one case at any one term of the court. Fees shall not be allowed to more than two witnesses to the same fact, unless the judge before whom the cause is tried shall, after such case has been tried, continued, or otherwise disposed of, certify that such witnesses were necessary in the cause.

"No witness subpoenaed, recognized, or attached for the purpose of proving the general reputation of the defendant shall be allowed

the benefits hereof, provided the trial judge may in his discretion, allow pay to not more than two character witnesses for the State and to not more than two character witnesses for the defendant. (As amended Acts 1931, 42nd Leg., p. 239, ch. 143, § 3.)"

In an opinion rendered by this department on February 21, 1935, written by Honorable Leon O. Moses, Assistant Attorney General, addressed to the District Clerk, Sweetwater, Texas, it was held that no witness shall receive pay for his services as a witness in more than one case at any one term of court; however, in the event the witness is instructed by the Judge to return at the same term of the District Court at which he was summoned, and on the same case, the witness would be entitled to his fee and mileage for a second trip.

This department held in Opinion No. 0-1594 that an out of county witness in a felony case is entitled to two dollars and his actual traveling expenses not exceeding four cents per mile going to and returning from the court for a second trip to the court during the same term and in the same case.

Section 3 of Article 1036, supra, provides:

"No witness shall receive pay for his services as a witness in more than one case at any one term of court."

However, as above indicated this Statute does not prohibit a witness, receiving two dollars per day and his actual traveling expenses not exceeding four cents per mile going to and returning from the court for a second trip to the court during the same term and in the same case.

Article 1036, Code of Criminal Procedure, supra, specifically provides that any witness who may have been recognized, subpoenaed or attached, and given bond for his appearance before any court, or before any grand jury, out of the county of his residence to testify in a felony case, and who appears in compliance with the obligations of such recognizance or bond, shall be allowed his actual traveling expenses, not exceeding four cents per mile going to and returning from the court or grand jury, by the nearest practical conveyance, and two dollars per day for each day he may necessarily be absent from home as a witness in such

Honorable Forrester Hancock, Page 5

case. Said Statutes further provides that such witness shall receive from the State, for the attendance upon the District Court and grand jury in counties other than that of his residence, and obedience to subpoenas issued under the provisions of law his actual traveling expenses, not exceeding four cents per mile, going to and returning from the court or grand jury, by the nearest practical conveyance, and two dollars per day for each day he may necessarily be absent from home as a witness, to be paid as now provided by law.

In view of Article 1036, Code of Criminal Procedure, supra, you are respectfully advised that it is the opinion of this department that your question should be answered in the affirmative, and it is so answered.

Trusting that the foregoing fully answers your inquiry, we remain

Yours very truly

ATTORNEY GENERAL OF TEXAS

Ardell Williams

By

Ardell Williams
Assistant

AW:rs

APPROVED MAR 9, 1940

Gerard B. Mann

ATTORNEY GENERAL OF TEXAS

